IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4286 OF 1992

Shankar Dattatraya Kulkarni
& Anr. ..Petitioners

versus

Keru Bapu Londhe & Ors. ..Respondents

Mr. G. B. Karandikar for the Petitioners.

Mr. P. N. Joshi for the Respondents No. 1 to 3.

CORAM : D. G. DESHPANDE, J.

DATE : 6TH NOVEMBER, 2006

ORAL ORDER :

1. Heard learned counsel for the petitioners and the Respondent Nos. 1 to 3.

2. The landlord - the owner of the agricultural land has filed this petition. Respondents are the legal heirs of the original tenant Bapu Londhe. The petition is directed against the order of the MRT in Tenancy Appeal No. 27 of 1991 dated 22.6.1992.

3. This litigation has a chequered history of about 45 or more. From the judgment filed, it is

clear that again and again the matter was remanded.

4. The crucial question in this case is whether the tenant is entitled to hold the land which is in excess of the ceiling area under Section 32A and other question is which should be the date for considering the holding of the tenant.

5. Exhibit 'C' is the order. In the title it is written it is Tenancy Appeal No. 27 of 1991, thereafter it is mentioned as Revision Application dated 31.1.1991 and at the end of the operative part, it is stated that Revision Application is dismissed. Therefore, this is an order in Revision. This Revision before the MRT was filed by the landlord - petitioner against the order of the SDO, by which the order of the SDO directing restoration of possession of the land to the heirs of the tenant Bapu Londhe was confirmed. That order of the SDO is dated 25.11.1990.

6. Bapu Londhe was the original tenant and suit land was in his possession, till sometime before the Tiller's day i.e. 1.4.1957. He was in possession on 15.6.1955 i.e. on appointed day as contemplated

by Section 33B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Tenancy Act"). But he was dispossessed of the land by the landlord before the Tiller's day otherwise than in the manner and by the order of the Tahsildar. Thereafter, Tahsildar initiated enquiry under Section 32(1B) of the Tenancy Act as the Appellants - landlords were in possession of the land on 31.7.1969. After necessary enquiry, an order came to be passed that original tenant Bapu Londhe was not entitled to restoration of possession of the land because the tenant Bapu Londhe already held land in excess of ceiling area. This was an order dated 31.3.1972. Then this order came to be challenged and so many orders came to be passed by different Authorities and ultimate order is the order of the MRT which is under challenge before this Court.

7. According to the petitioner - landlord the crucial date for deciding the holding of the tenant will be the date on which he applies under Section 32 (1B) of the Tenancy Act. According to Mr. Joshi, the first order is dated 3.6.1987. However, he conceded that the first order was passed in 1972

as mentioned above, that is, to be specific on 30.3.1972 which went against the tenant. Bapu Londhe died on 24.5.1974.

8. Section 32(1B) of the Tenancy Act, with proviso reads as under:

> **"32(1B) : Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29, is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said section 29, either suo moto or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in-title, and shall be restored to the tenant; and thereafter, the provisions of this section and sections 342A to 32R (both inclusive) shall, in so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased the land on the date on which the land is restored to him:**
>
> **Provided that, the tenant shall be entitled to restoration of the land under this sub-section only if he undertakes to cultivate the land personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area."**
>
> (The entire section is not necessary and

therefore it is produced upto proviso only).

Section 32A reads as under:

> **"32A. Tenants deemed to have purchased upto ceiling area -- A tenant shall be deemed to have purchased land under section 32, --**
>
> **(1) in the case of a tenant who does not hold any land as owner but holds land as tenant in excess of ceiling area upto the ceiling area;**
>
> **(2) in the case of a tenant who holds land as owner below the ceiling area, such part of the land only as will raise holding to the extent of the ceiling area."**

9. From the facts on record, it is clear that the tenant was dispossessed otherwise than in due course of law and therefore enquiry was initiated under Section 32(1B) of the Tenancy Act vide Tenancy Case No. 58 of 1971 and Special Additional Tahsildar, Sinnar, passed an order on 30.3.1972 holding that the said tenant Bapu Londhe was not entitled to restoration of possession because he already held land in excess of ceiling area.

10. Therefore, as stated above, the whole issue centre around the point, that is, which should be the date of considering the holding of the tenant. If provisions of Section 32(1B) and 32A are

considered, there cannot be any doubt, that crucial date is the date on which the tenant applies for restoration of possession under Section 32(1B) or where suo motu proceedings are initiated under Section 32(1B) by the Tahsildar. Enquiries were held and order for restoration of possession is passed, but the proviso to Section 32(1B) makes it completely clear that such an order of restoration can be passed only if the tenant undertakes to cultivate the land personally, and, secondly, it can be passed only in respect of the said land if the same is taken together with the other land held by the tenant it does not exceed the ceiling area.

11. Therefore, the crucial date for considering the holding of the tenant will be the date on which the Tahsildar passed an order under Section 32 (1B). Section 32A is about tenant deemed purchaser under Section 32 but even that deemed purchase should not be in excess of the ceiling area.

12. Admittedly, when the order was passed by the Tahsildar under Section 32(1B) on 30.3.1972, the original tenant Bapu was already holding the land in excess of ceiling area and therefore he was not

entitled to restoration of possession of the land.

13. Contention of Mr. Joshi, Advocate for the respondent cannot be accepted that the crucial date for deciding the holding of the tenant should be 3.6.1987. The order of the Tahsildar under Section 32(1B) is dated 31.3.1972. It is the first order in that regard and on that date Bapu Londhe was already holding the land in excess of ceiling area and therefore neither he nor his heirs can claim that the land involved in the present petition would have been restored to them.

14. Counsel for the respondent - tenant also tried to contend that the land held by the original tenant Bapu Londhe was joint family property. In this regard, MRT, in its order dated 21.6.1982 has rejected the contention of the tenant and it has been held:

> **"Atleast , it is not urged before me that the tenancy rights of Bapu was the tenancy rights of his joint family. Hence, at least presently it is required to be held that the tenancy in question was the self acquired property of late Bapu."**

15. Even otherwise there is nothing on record to show that when Bapu took the property on lease from the landlord, he was joined with his brothers or other co-parceners. Being the Karta of his family he has no ancestral property in his hand then whatever is acquired by him becomes his personal property and the children or legal heirs cannot say that it is a joint family property for that. There is no evidence of the legal heirs of Bapu Londhe to the effect that the property held by Bapu Londhe independently as his own property and this suit property is tenanted property was held by him as joint family property. Therefore when the property of original tenant Bapu on the date of the first order dated 31.3.1972 was not the joint family property, then all the land held by Bapu Londhe on that date his personal land as well as tenanted land was rightly considered by the Special Additional Tahsildar and he held that tenants were not entitled to any of the present land because of holding of Bapu Londhe was already in excess of ceiling area.

16. All the Authorities below have not taken this important aspect into consideration and they came to a wrong conclusion. Therefore, the petition

is required to be allowed. The Petition is allowed. Rule made absolute. All the orders of the court below and consequently the application filed by the original tenant Bapu Londhe under Section 32(1B) is dismissed.

(D.G. DESHPANDE, J.)